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CHARLES ELMO

In the Supreme Court of the United States

OCTOBER TERM, 1931

Case No. 357

THE PACKER CORPORATION,
a Corporation,
Appellant.

vs.

STATE OF UTAH,
Appellee,

Statement as to Jurisdiction on Appeal With Acknowledgment of Service

DAN B. SHIELDS,
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LEGAL PRINTING CO., SALT LAKE

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STATEMENT AS TO JURISDICTION ON APPEAL WITH ACKNOWLEDGMENT OF SERVICE

The appellant, in support of the jurisdiction of this Court to review the above entitled cause of appeal, respectfully states:

A. That under Section 237 of the Judicial Code, as amended February 13, 1925, 43 Stat. 937 (28 U. S. C. A. Sec. 344), this Court has jurisdiction to review a decision of the highest Court of the state wherein the validity of

a state statute is drawn in question on the ground of it being repugnant to the Constitution of the United States. In this case it was contended by appellant that Section 2, of an Act amending Section 2, Chapter 145, Laws of Utah, 1921 and as amended by Chapter 52, Laws of Utah, 1923, as amended by Chapter 92, Laws of Utah, 1929, was invalid on the ground that it was repugnant to Article 1 Section 10; Article 1 Section 8; Article 4 Section 2; and the Fourteenth Amendment of the Federal Constitution.

B. The judgment sought to be reviewed was rendered by the Supreme Court which is the court of final resort of the State of Utah on July 30, 1931, (Record, p. 13). Appellant's petition for rehearing was entertained and denied and decree made final on the 25th day of August, 1931 (Record, p. 14). The petition for allowance of appeal was presented on the 25th day of August, 1931, (Record, p. 1), and allowed the same day. (Record, p. 3).

C. Section 2, Chapter 145, Laws of Utah, 1921, as amended by Chapter 52, Laws of Utah, 1923, as amended by Chapter 92, Laws of Utah, 1929, is as follows:

> SEC. 2. *Unlawful to display advertising — where.* It shall be a misdemeanor for any person, company, or corporation, to display on any bill board, street car sign, street car, placard, or on any other object or place of display, any advertisement of cigarettes, cigarette papers, cigars, chewing tobacco, or smoking tobacco, or any disguise or substitute of either, except that a dealer in cigarettes, cigarette papers, tobacco, or cigars or their substitutes, may have a sign on the front of his place of business stating that he is a dealer in such articles, provided that nothing herein shall be construed to prohibit the advertising of cigarettes, cigarette papers, chewing tobacco, smoking tobacco, or any disguise or substitute of either in any newspaper,

magazine or periodical printed or circulating in the State of Utah.

Appellant is a Delaware corporation, authorized to do and doing business in the State of Utah; that on the 22nd day of April, 1931, the appellant was the owner of a certain bill board in Salt Lake City, Salt Lake County, State of Utah, and displayed thereon an advertisement of Chesterfield Cigarettes by displaying a representation of a package of Chesterfield Cigarettes with the words "Good Taste Takes the Lead;" that said advertisement was posted on said bill board under the authority and direction of the manager of the appellant in the State of Utah; that the bill board was located on a certain public highway in said Salt Lake City, facing the highway where it could be seen by the public, on the 22nd day of April, 1931; that the poster displayed on the bill board was manufactured out of the State of Utah and shipped into the State of Utah and was placed on the bill board under the terms of a contract entered into by the appellant at its home office in Cleveland, Ohio, with Foster & Kleiser Company, of San Francisco, California, for Liggett & Myers Tobacco Company, the manufacturer of Chesterfield Cigarettes, in which contract the defendant agreed to display said poster; that said poster was shipped into the State of Utah from Liggett & Myers Tobacco Company, of San Francisco, California; that like posters were displayed by appellant in various cities and counties in the State of Utah in accordance with the terms of said contract; that said display of said poster and all others displayed by appellant was done as a part of a general contract in effect in the United States generally for the advertising of Chesterfield Cigarettes; that the Chesterfield Cigarettes advertised on said poster are not manufactured in the State of Utah but are shipped into the State

of Utah and sold generally in the State of Utah.

That on the 24th day of April, 1931, a complaint (Record, p. 23) was signed and filed against the appellant and George W. Hamlyn, its manager, charging that on the 22nd day of April, 1931, in the County of Salt Lake, State of Utah, the defendants did commit the crime of displaying a cigarette advertisement on a bill board in violation of the Section of the Laws of Utah, hereinabove referred to, by wilfully and unlawfully displaying in Salt Lake City, Salt Lake County, State of Utah, on said bill board, said advertisement of Chesterfield cigarettes; that appellant, as defendant in said action, was found guilty of the charge and sentenced to pay a fine; that said cause was appealed to the Supreme Court of the State of Utah and the Supreme Court of the State of Utah sustained the conviction of the lower court, that the order of said Supreme Court of the State of Utah was and is null and void and erroneous, in that it held that said Section of the Laws of Utah above referred to, did not impair the obligation of appellant's contract contrary to Article 1 Section 10 of the Federal Constitution; did not interfere with interstate commerce in violation of Article 1 Section 8 of the Federal Constitution, did not abridge the privileges and immunities of appellant contrary to the provisions of Article 4, Section 2 of the Federal Constitution, and did not deprive the appellant of property without due process of law or deny to appellant within the jurisdiction of the State of Utah, the equal protection of the laws of Utah in violation of the provisions of the Fourteenth Amendment to the Federal Constitution, the rights of the appellant in that behalf being guaranteed and protected by said provisions of the Constitution of the United States.

D. The following decisions of this Court are believed to sustain the jurisdiction of this appeal:

Marvin vs. Trout, 199 U. S. 212, 50 L. Ed. 157.

White River Lumber Co. vs. Arkansas, 279 U. S. 692, 49 S. Ct. 457, 73 L. Ed. 903.

Adams vs. Russell, 229 U. S. 353, 33, S. Ct. 846, 57 L. Ed. 1224.

Wayhauser vs. Minnesota, 176 U. S. 550, 20 S. Ct. 485, 44 L. Ed. 583.

U. S. F. & G. vs. Oklahoma, 250 U. S. 111, 39 S. Ct. 399, 63 L. Ed. 876.

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American Sugar Ref. Co. vs. Louisiana, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102.

New York ex rel. Bryant vs. Zimmerman, 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 52.

It is therefore respectfully submitted that this Court has jurisdiction to hear and determine this appeal.

DAN B. SHIELDS,

WILLIAM H. REEDER, JR.,

Attorneys for Appellant,

THE PACKER CORPORATION,
a Corporation.

The undersigned counsel of record for the Appellee hereby acknowledge service of a copy of the foregoing statement as to jurisdiction on appeal.

Dated at Salt Lake City, Utah, this .....day of September, 1931.

.....

Attorney General

.....

Assistant Attorney General

Attorneys for Appellee.

STATE OF UTAH.